

Statutes & Rules

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Arizona State Board of Optometry



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MISSION STATEMENT

The mission of the Optometry Board is to protect the health, safety and welfare of Arizona citizens by regulating and achieving the highest standards in the optometry profession.

DISCLAIMER:
The Arizona State Board of Optometry has published this Statute and Rule Book as an informational service to licensees and stakeholders. The information contained in this publication is merely representative of the official publications for the Arizona Revised Statutes (Legislative) and Arizona Administrative Code (Secretary of State).
Be advised that every effort was made to make the information provided herein accurate and timely; users should understand that errors can occur and the Arizona State Board of Optometry is and will not be responsible for any results of this information not being accurate. When necessary, please rely on the official version of rules, statutes, and/or standards of care.

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Chapter 16 Arizona Revised Statutes Article 1 - General Provisions

32-1701. Definitions

In this chapter, unless the context otherwise requires:

- 1. "Board" means the state board of optometry.
- 2. "Conviction" means a judgment of conviction by any state or federal court of competent jurisdiction in a criminal cause, regardless of whether an appeal is pending or could be taken, and includes any judgment or order based on a plea of no contest.
- 3. "Licensee" means a person licensed to practice the profession of optometry pursuant to this chapter.
- 4. "Optometrist" or "doctor of optometry" means a person who has graduated from an accredited college of optometry.
- 5. "Pharmaceutical" or "pharmaceutical agent" means a prescription or nonprescription substance or a schedule III controlled substance used for examination, diagnosis or treatment of conditions of the human eye and its adnexa.
- 6. "Practice of the profession of optometry" means:
 - (a) The examination or refraction of the human eye and its appendages and the employment of any objective or subjective means or methods other than surgery for the purpose of diagnosing or treating any visual, muscular, neurological or anatomical anomalies of the eye.
 - (b) The use of pharmaceutical agents authorized pursuant to this chapter.
 - (c) The use of any instrument or device to train the visual system or correct any abnormal condition of the eye or eyes.
 - (d) The prescribing, fitting or employment of any lens, prism, frame or mountings for the correction or relief of or aid to the visual function, provided that superficial foreign bodies may be removed from the eye and its appendages.
 - (e) The taking of smears of the human eye and its adnexa for culture analysis and the ordering or performing of clinical tests that are appropriate to diagnose, treat, or manage conditions of the human eye and its adnexa and that are limited to those CLIA-waived clinical tests approved pursuant to 42 Code of Federal Regulations section 493.15.
- 7. "Surgery" means, in reference to the human eye and its appendages, an invasive procedure in which in vivo human tissue is cut, burned, vaporized, removed, coagulated or photodisrupted by use of an electrical cautery, a scalpel, a cryoprobe, a laser, or ionizing radiation. Surgery does not include nonsurgical procedures including the removal of superficial foreign bodies or eyelashes or the use of lasers for diagnostic purposes.

- 8. "Unprofessional conduct" means:
 - (a) Wilful betrayal of a professional secret or wilful violation of a privileged communication except as otherwise required by law.
 - (b) Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect. This subdivision does not prohibit a bona fide lease based on the revenues earned by a licensee.
 - (c) Addiction to, or illegal use of, narcotic drugs or use of intoxicating beverages to excess or practicing or attempting to practice the profession of optometry while under the influence of intoxicating beverages or narcotic drugs.
 - (d) Impersonating another licensee.
 - (e) Knowingly having professional connection with or lending one's name to a person who is not a licensee.
 - (f) Gross negligence, repeated or continuing acts of negligence or incompetence in the practice of optometry.
 - (g) Any conduct or practice, including incompetency, that constitutes a danger to the health, welfare or safety of patients or the public.
 - (h) Prescribing, dispensing or pretending to use any secret means, methods, device or instrumentality.
 - (i) Refusing to divulge to the board on demand the means, methods, device or instrumentality used for optometric examination or therapy.
 - (j) Representing that a manifestly not correctable condition can be permanently corrected or that a correctable condition can be corrected within a stated time if this is not accurate.
 - (k) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of the profession of optometry.
 - (l) Failing to comply with a board order or consent agreement.
 - (m) Fraud, forgery, unsworn falsification, false swearing or perjury involving a matter before the board or a written instrument submitted to the board.
 - (n) Wilfully and without legal justification failing to furnish in a timely manner information that is necessary for the board to conduct an investigation under this chapter and that has been requested or subpoenaed by the board.
 - (o) Conduct that discredits the profession.
 - (p) Sexual intimacies with a patient in the course of care or treatment.

(q) Falsely claiming attendance at a required continuing education course.

32-1702. Board of optometry; appointment; qualifications; term; removal

- A. There is established a state board of optometry which consists of six members appointed by the governor. Terms of office are for four years expiring on July 1 of the respective year. Four members shall have been licensed and engaged in the active practice of the profession of optometry in this state for at least three years immediately prior to appointment, one member shall be a physician licensed pursuant to chapter 13 or 17 of this title, and one member shall be a lay person with no interest, direct or indirect, in the practices of optometry, opticianry or medicine.
- B. The governor may remove any professional member for incompetency or unprofessional conduct or when his license has been revoked or suspended or when he has been censured or placed on probation. The governor may remove any member for neglect of duty or improper conduct. The unexcused absence of a member for more than two consecutive meetings is justification for removal. Appointment by the governor to fill a vacancy caused other than by expiration of a term is for the unexpired portion of the term.
- C. A member of the board is ineligible to serve more than two consecutive full terms. The completion of the unexpired portion of a full term does not constitute a full term for purposes of this subsection.
- D. The board shall conduct regular meetings at least six times each year at times and places designated by the board or the governor. Special meetings may be called that the president determines are necessary to carry out the functions of the board, including meetings using communications equipment that allows all members participating in the meetings to hear each other.
- E. A majority of the members of the board constitutes a quorum and a majority vote of a quorum present at any meeting governs all actions taken by the board.

32-1703. Organization of board; compensation; immunity

- A. The board shall annually elect from its members a president who shall be chief presiding officer of the board and such other officers as it deems appropriate and necessary to conduct its business. The board shall assign such duties as it deems appropriate to such other officers as it elects.
- B. Members of the board are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent in the performance of their duties.
- C. Members of the board, its agents and employees and members of advisory committees are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

32-1704. Powers and duties of the board

- A. The board shall adopt, and may amend, rules consistent with this chapter governing the practice of the profession of optometry, for the performance of its duties under this chapter and for the examination of applicants for licenses. The board shall adopt and use a seal, administer oaths and take testimony concerning any matter within its jurisdiction.
- B. The board may not adopt a rule that:

- 1. Regulates a licensee's fees or charges to a patient.
- 2. Regulates the place in which a licensee may practice.
- 3. Prescribes the manner or method of accounting, billing or collection of fees.
- 4. Prohibits advertising by a licensee unless the advertising is inconsistent with section 44-1481.
- C. The board shall maintain its records in accordance with a retention schedule approved by the Arizona state library, archives and public records.
- D. The board shall adopt rules for criteria it must use to approve continuing education programs for licensees. Programs shall be designed to assist licensees to maintain competency, to become aware of new developments in the practice of the profession of optometry and to increase management skills and administrative efficiency. The board shall approve programs that meet these criteria.
- E. The board may hire an executive director as an employee of the board. The executive director is responsible for the performance of the regular administrative functions of the board and such other administrative duties as the board may direct. The executive director is eligible to receive compensation in an amount as determined pursuant to section 38-611.
- F. The board may hire or contract with investigators to assist in the investigation of violations of this chapter, hire other employees required to carry out this chapter and contract with other state agencies when required to carry out this chapter.
- G. The board may:
 - 1. Appoint advisory committees.
 - 2. Issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence it deems relevant to an investigation or hearing.
 - 3. Charge reasonable fees for materials it has printed at its own expense.
 - 4. Delegate to the executive director, board staff and persons with whom the board contracts the board's licensing and regulatory duties. The board shall adopt rules for each specific licensing and regulatory duty the board delegates pursuant to this paragraph.
- H. The board may hire consultants and professional and clerical personnel as required to perform its duties.
- I. The board may contract with other state or federal agencies as required to carry out this chapter.
- J. Subject to the limitations of section 41-2544, the executive director may enter into agreements to allow licensees to pay fees by alternative methods, including credit cards, charge cards, debit cards and electronic funds transfers.
- K. A person who is aggrieved by an action taken by the executive director, board staff or person with whom the board contracts may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the action by personal delivery or certified mail

to that person's last known residence or place of business. At the next regular board meeting, the board shall review the action and approve, modify or reject the action.

32-1705. Board of optometry fund

- A. A board of optometry fund is established.
- B. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of monies from whatever source which come into the possession of the board in the state general fund and deposit the remaining ninety per cent in the board of optometry fund.
- C. Monies deposited in the board of optometry fund are subject to section 35- 143.01.

32-1706. Use of pharmaceutical agents

- A. A licensee may prescribe, dispense and administer over-the-counter pharmaceuticals and topical prescription pharmaceuticals subject to the pharmaceutical agent classifications specified in section 32-1728.
- B. A licensee may prescribe, dispense and administer the following oral prescription pharmaceuticals subject to the pharmaceutical agent classifications specified in section 32-1728:
 - 1. Antibiotics classified as tetracycline and its derivatives, cephalosporins, penicillin and its derivatives and erythromycin, azithromycin and clarithromycin. A licensee may prescribe these antibiotics for any one patient for each occurrence for a period not more than the day limit recommended by the manufacturer or by the physicians' desk reference. If the patient's condition is other than blepharitis and does not improve during the first seventy-two hours of treatment by means of an oral antibiotic, the licensee shall consult with the patient's primary care physician or other family physician for the purpose of referral of the patient to a physician who specializes in ophthalmology, infectious diseases, internal medicine or neurology. After the referral has been made, the licensee shall consult with the specialist. The licensee shall note the consultation in the patient's file. If the treatment is by oral antibiotics for blepharitis and if the patient's condition does not improve during the first ten days of treatment, the licensee shall request the patient's primary care physician or other family physician to refer the patient to a physician who specializes in ophthalmology, infectious diseases, internal medicine or neurology. On notification of the referral the licensee shall consult with the specialist. The licensee shall note the consultation in the patient's file. If the condition is not resolved at the end of the normal treatment period, the licensee shall request the patient's primary care physician or other family physician to refer the patient to a physician who specializes in ophthalmology, infectious diseases, internal medicine or neurology. On notification of the referral the licensee shall consult with the specialist. The licensee shall note the consultation in the patient's file. A licensee shall not prescribe, dispense or administer an oral antibiotic to a person who is under six years of age. For the purpose of this paragraph, "physician" means a person who is licensed pursuant to chapter 13 or 17 of this title.
 - 2. Antihistamines. A licensee may prescribe an antihistamine for not more than seven days for any one patient. The licensee shall request the patient's primary care physician or other family physician who is licensed pursuant to chapter 13 or 17 of this title to refer the patient. The licensee may prescribe only the following prescription antihistamines:

- (a) Cetirizine.
- (b) Loratadine.
- (c) Fexofenadine.
- 3. Nonprescription nonsteroidal anti-inflammatory agents. A licensee may prescribe, dispense and administer these agents in dosages that exceed over-the-counter dosages but that do not exceed maximum dosages of counterpart prescription nonsteroidal anti-inflammatory agents.
- C. A licensee may prescribe, dispense and administer a schedule III controlled substance only if it is an analgesic.
- D. A licensee shall not prescribe, dispense or administer the following prescription substances:
 - 1. An oral steroid.
 - 2. An oral antifungal.
 - 3. An oral antiviral.
 - 4. An oral carbonic anhydrase inhibitor.
 - 5. An oral antimetabolite.
 - 6. An oral immunosuppressive.
 - 7. A substance administered intravenously.
 - 8. Except as provided in subsection E, substances administered by injection.
 - 9. A schedule I, II, IV or V controlled substance.
 - 10. An oral agent for the treatment of closed angle glaucoma attack.
 - 11. Except as provided in subsection B, paragraph 3, an oral nonsteroidal anti-inflammatory agent.
- E. A licensee may use epinephrine auto-injectors to counteract an anaphylactic reaction. A licensee who uses auto-injectors may order and maintain anaphylactic-related supplies. The board shall require a licensee to maintain in the licensee's office medically necessary supportive equipment and supplies that are used in connection with the treatment of an anaphylactic reaction including oxygen equipment, airway maintenance equipment or other necessary equipment consistent with the prevailing standard of care as specified by the board.

Article 2 – Licensing

32-1721. Persons and acts not affected by this chapter

This chapter does not apply to:

- 1. Physicians and surgeons duly licensed to practice medicine and surgery in this state, if they are practicing lawfully.
- 2. Dispensing opticians duly licensed to practice, if they are practicing lawfully in accordance with the provisions of section 32-1671.
- 3. The sale of complete ready-to-wear eyeglasses as merchandise from a permanently established place of business.
- 4. A licensed or unlicensed individual performing duties delegated under the authority of a licensee.

32-1722. Qualifications of applicant; applications

- A. A person of good moral character who desires to engage in the practice of the profession of optometry shall file with the board not less than thirty days before the date on which an examination is to be held a verified application with the required application fee that includes:
 - 1. The applicant's name, age and address.
 - 2. Documentation of graduation from a university or college that teaches the profession of optometry and that is accredited by a nationally accepted accrediting body on optometric education.
 - 3. Documentation of satisfactory completion of an equivalent course of study that is approved by the board in didactic education, pharmacology and clinical training in the examination, diagnosis and treatment of conditions of the human eye and its adnexa that either:
 - (a) Meets the contemporary educational requirements at colleges of optometry in the United States.
 - (b) Totals at least one hundred twenty hours.
 - 4. Documentation of the successful passage of a written examination as prescribed by the board.
 - 5. Background information on a form prescribed by the attorney general for the purpose of conducting an investigation into the existence of prior arrests and convictions.
 - 6. Disclosure of any investigation conducted or pending by an optometric regulatory board in another jurisdiction in the United States.
- B. On receipt of an application in proper form and containing the information prescribed in subsection A of this section, the board may investigate the applicant's character, ability and experience.
- C. For the purposes of an investigation that is conducted pursuant to subsection B of this section, the board may subpoena witnesses, administer oaths and take testimony with respect to the character of the applicant or to any matter affecting the application at a hearing held after sufficient notice has been given.
- D. If the board finds that the applicant has passed the examination provided for under section 32-1724 and that the applicant's character, ability and experience are satisfactory, the board shall issue a license.

32-1723. Licensure by endorsement

The board shall waive the written examination requirements of this chapter if all of the following are true:

- 1. The applicant submits a license or a certified copy of a license to practice optometry issued by the regulatory board of another jurisdiction of the United States that has licensure requirements that the board determines meet or exceed the requirements of this chapter.
- 2. The license of the applicant has not been suspended or revoked by any other licensing jurisdiction of the United States for any cause that is a ground for suspension or revocation of a license under this chapter.
- 3. The applicant has been engaged in the practice of the profession of optometry continuously in the other licensing jurisdiction for not less than four of the five years immediately preceding the application or in the military.
- 4. The information provided by national data banks designated by the board has successfully verified the applicant.
- 5. The applicant meets the requirements of section 32-1722 concerning good moral character.

32-1724. Examination of applicants; time of examination

- A. Licensing examinations shall be conducted and graded according to rules prescribed by the board. The board shall not grade examinations on a curve.
- B. The board may give applicants a written examination on subjects currently being taught in universities or colleges of optometry as well as on this state's statutes and rules relating to the practice of optometry. In lieu of its written examination for licensure, the board may accept documentation from the national board of examiners in optometry that shows that an applicant has passed board designated parts of the national board's examination. To receive a passing grade on a written examination administered by the board, an applicant shall receive a grade of not less than seventy-five per cent on the whole written examination and not less than fifty per cent in any one subject.
- C. The board may give applicants a practical examination on subjects currently being taught in universities or colleges of optometry and shall give an examination on this state's statutes and rules relating to optometry. In lieu of its practical examination for licensure, the board may accept documentation from the national board of examiners in optometry that shows that the applicant has passed board designated parts of the national board's examination. To receive a passing grade on a practical examination, an applicant shall receive a grade of not less than seventy-five per cent.
- D. Examinations shall be held at least once each year. Notice of examinations shall be given not less than sixty days before the date of examination. The board shall adopt rules to establish conditions under which an applicant who is unable to take the examination and who notifies the board before the date fixed for the examination may take the next examination.

32-1725. Issuance of license

Each applicant who satisfactorily passes the examination shall upon payment of the issuance fee be issued a license under the seal and signatures of the members of the board. Failure to pay the issuance fee within sixty days necessitates the retaking of the examination.

32-1726. Renewal of license; continuing education; failure to renew

- A. Beginning on September 1, 2001, a licensee who wishes to renew a license must do so every other year on or before the licensee's birthday by submitting a completed renewal form and the renewal fee prescribed by the board. A licensee who does not renew a license within thirty days after the licensee's birthday must also pay a late fee as prescribed by the board. A license expires if the licensee does not renew the license within four months after the licensee's birthday. A person who practices optometry in this state after that person's license has expired is in violation of this chapter.
- B. As a condition of renewal or reinstatement each licensee shall complete thirty-two hours of continuing education as prescribed by the board. The board shall require continuing education on the subject of pharmaceutical use for doctors who are authorized by the board to prescribe, dispense, and administer pharmaceuticals. The board may waive or adjust the continuing education requirements for good cause shown.
- C. To reinstate an expired license a person must submit a written application and pay all delinquent biennial fees, all late fees and a fifty dollar penalty fee for each year the license remains unrenewed. The board shall not require the applicant to pass an initial licensing examination if the applicant meets the requirements of this subsection within five years after the license expired.
- D. A person holding a license to practice the profession of optometry in this state who has not engaged in the practice of the profession of optometry within a five year period shall pass an initial licensing examination before the license is renewed.

32-1727. Fees

- A. The following fees shall be paid to the board:
 - 1. Filing an application for examination, one hundred fifty dollars.
 - 2. License issuance fee as established by the board.
 - 3. Renewal of a license to practice the profession of optometry as established by the board.
 - 4. Late renewal of a license as established by the board.
 - 5. Application for a license by endorsement, three hundred dollars.
 - 6. Duplicate license fee, thirty dollars.
 - 7. Certificates of special qualification, twenty dollars.
 - 8. Duplicate certificates of special qualification, twenty dollars.
 - 9. Optometry statute pamphlet fee, five dollars.
- B. Fees are not refundable.

32-1728. Pharmaceutical agents; certification; use; course of study

- A. A licensee initially licensed after the effective date of the amendment to this section, a licensee licensed by endorsement after the effective date of the amendment to this section or a licensee who passed an examination conducted by the board for the use of oral pharmaceutical agents before the effective date of the amendment to this section may prescribe, dispense and administer a pharmaceutical agent subject to the limitations provided in this chapter.
- B. The board may reissue a certificate for renewal for the use of pharmaceutical agents for topical diagnostic or topical therapeutic pharmaceutical agents, or both, to a person who holds an existing certificate issued on or before the effective date of the amendment to this section and who pays the certificate of special qualification fee prescribed in section 32-1727. The certificate may specify the following:
 - 1. Use of no drugs.
 - 2. Use of topical diagnostic agents.
 - 3. Use of topical diagnostic and therapeutic agents.
- C. The board may issue a certificate of special qualification to practice optometry without the use of pharmaceutical agents to a person who holds a current license as of July 1, 2000 and who pays the certificate of special qualification fee prescribed in section 32-1727.
- D. The board shall adopt a course of study for certification to use oral pharmaceuticals after consultation with colleges of optometry accredited by a nationally accepted accrediting body on optometric education and with the college of pharmacy at the University of Arizona. The board shall design and implement the course in a manner that requires a licensee who wishes to have the privilege of dispensing, prescribing and administering topical and oral pharmaceutical agents pursuant to this chapter meet the contemporary educational requirements related to pharmaceuticals authorized for licensees pursuant to this chapter at colleges of optometry in the United States and to demonstrate competence in dispensing, prescribing and administering those topical or oral pharmaceutical agents by passing examinations in those areas commensurate with doctoral candidates in colleges of optometry in the United States. The course of study shall teach and certify competence in the prescription and administration of topical or oral pharmaceutical agents pursuant to this chapter. The board shall adopt the course of study and completion requirements to reflect the current course of study and demonstrated competence level of pharmacy programs in colleges of optometry in the United States. The board may offer a course and examination that otherwise meets the requirements of this subsection and that is limited to oral pharmaceuticals for licensees who hold a valid diagnostic and therapeutic topical pharmaceutical permit issued pursuant to subsection A of this section.
- E. The board shall adopt a uniform prescription form for use by all licensees who have the privilege to prescribe, dispense and administer topical pharmaceuticals or oral pharmaceuticals. The prescription form shall indicate the prescribing authority of the licensees and whether the authority includes oral pharmaceuticals, topical pharmaceuticals or both oral pharmaceuticals and topical pharmaceuticals. The form shall include the name, address, telephone number, fax number and professional license number of the licensee.
- F. Annually on or before January 1 the state board of optometry shall mail to the Arizona state board of pharmacy the list of all licensees who have been certified to prescribe, dispense and administer either

oral pharmaceuticals or topical pharmaceuticals, or both. Within thirty days of any additional certification by the state board of optometry, the state board of optometry shall provide updated lists to the Arizona state board of pharmacy. At the same time the state board of optometry shall send the list to each licensed pharmacy in Arizona, excluding hospital pharmacies, long-term care pharmacies and infusion pharmacies.

32-1730. Fingerprinting

- A. Each applicant for licensure and license reinstatement pursuant to this chapter shall submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
- B. If the board does not have any evidence or reasonable suspicion that the applicant has a criminal history, the board may issue a license before it receives the results of a criminal records check.
- C. The board shall suspend a license of a person who submits an unreadable set of fingerprints and does not submit a new readable set of fingerprints within twenty days after being notified by the board to do so.
- D. This section does not affect the board's authority to otherwise issue, deny, cancel, terminate, suspend or revoke a license.

Article 3 - Regulation

32-1741. Practicing optometry without a license prohibited

It is unlawful for a person to practice the profession of optometry or to hold himself out to be or assume or attempt to act as a doctor of optometry without a valid license to practice the profession of optometry.

32-1742. Registering with board; public registry file; current information

- A. Each licensee shall provide the board in writing the addresses of all permanent and extended temporary locations in which the licensee practices and the licensee's office telephone numbers, mailing address and residence address. Any notice required to be given by the board to a licensee shall be sent by mail to the licensee's most current mailing address shown on the records of the board. The board may attempt to give or serve notice at any other address or location on file with the board if service to the mailing address is unsuccessful. Service of a required notice is complete on the date of mailing to the licensee's mailing address.
- B. The board shall maintain a current registry of each licensee's name, office locations and mailing address. The registry is open to the public.
- C. Each licensee shall give written notice to the board within ten days following each change in the licensee's residence address, mailing address, office location or office telephone number.

32-1743. Grounds for censure, civil penalty, probation, suspension, revocation, denial or renewal of license

After notice and a hearing the board in its discretion may censure, impose a civil penalty, prescribe probation, suspend or revoke the license of a doctor of optometry or refuse to issue or renew a license, certificate or registration for any of the following reasons:

- 1. Conviction of a felony or any offense involving moral turpitude.
- 2. Procuring or attempting to procure a license to practice optometry or a certificate to use pharmaceutical agents by fraud, deceit, misrepresentation or knowingly taking advantage of the mistake of another person or agency.
- 3. Conduct likely to deceive or defraud the public.
- 4. Unprofessional conduct.
- 5. Employment of a solicitor to solicit business or soliciting from house to house or person to person.
- 6. Obtaining a fee or compensation by fraud or misrepresentation.
- 7. Employment of a person to engage in the practice of the profession of optometry who does not hold a license to practice the profession of optometry in this state.
- 8. Using any device to evade or defeat the provisions of this chapter, such as a profit sharing plan or partnership with a person not licensed to practice the profession of optometry in this state.
- 9. The practice of the profession of optometry under a false or assumed name.
- 10. Violation of any provision of this chapter.
- 11. Violation of any of the rules adopted by the board pursuant to this chapter.
- 12. Any violation of any statutes, laws or rules regulating the practice of optometry in this state or any other jurisdiction in the United States.
- 13. Providing any controlled substance or pharmaceutical agent not authorized by this chapter or providing any controlled substance or prescription-only drug for other than accepted therapeutic purposes for diagnosis and treatment of conditions of the human eye and its adnexa.
- 14. Gross malpractice or repeated acts constituting malpractice.
- 15. Failing to maintain or submit records as required by this chapter.

32-1744. <u>Board investigations</u>; duty to report violations; hearing; decision of board; informal settlement conference

- A. The board on its own motion shall investigate any evidence that appears to show that a licensee may be guilty of a violation of section 32-1743. Any person may report to the board information the person may have that appears to show that a licensee may be guilty of unprofessional conduct or of practice without regard for the safety and welfare of the public. A person who reports or provides information to the board in good faith is not subject to civil damages as a result, and the name of the person reporting shall not be disclosed unless the information is necessary to conduct an investigation or is essential to disciplinary proceedings conducted pursuant to this section.
- B. The board, its designee or the executive director shall require a licensee to provide a written response to a complaint within twenty days after the licensee receives the notification of complaint.

- C. Except as provided in subsection E of this section, if in the opinion of the board it appears that information provided under subsection A of this section may be accurate and a violation of this chapter, the board shall request an informal interview with the licensee before proceeding to a formal hearing. If the licensee refuses an invitation for an informal interview, or if the licensee accepts the invitation and if the results of the interview indicate suspension or revocation of license may be in order, a complaint shall be issued and a formal hearing held pursuant to title 41, chapter 6, article 10. If at the informal interview the board finds the information provided under subsection A of this section is accurate but not of sufficient seriousness to merit suspension exceeding thirty days or revocation of the license, it may take any or all of the following actions:
 - 1. Issue a decree of censure or written reprimand.
 - 2. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate the licensee. Probation may include a requirement for a refund of fees and charges to professional services clients resulting from services performed in violation of this chapter or rules adopted pursuant to this chapter, restriction of a license to practice or temporary suspension not to exceed thirty days. Failure to comply with probation is cause for filing a complaint and holding a formal hearing pursuant to title 41, chapter 6, article 10.
 - 3. Impose a civil penalty of not more than one thousand dollars for each violation of this chapter.
- D. If the board determines that a reasonable basis exists to believe that a violation of this chapter or rules adopted pursuant to this chapter has occurred and the violation is not sufficiently serious to warrant disciplinary action, it may send a letter of concern to the licensee. The letter of concern shall advise the licensee of the possible violation and the board's decision not to initiate proceedings. If violations occur after the board sends a letter of concern, the board may initiate proceedings on all violations, including the violation that was the subject of the letter of concern.
- E. If in the opinion of the board it appears that information provided under subsection A of this section may be accurate, the board may issue a complaint and hold a formal hearing pursuant to title 41, chapter 6, article 10 without first holding an informal interview if the probable violation involves one or more of the following:
 - 1. Gross negligence.
 - 2. Fraud, forgery, unsworn falsification, false swearing or perjury.
 - 3. Three or more repeated offenses.
 - 4. Conviction of a felony.
 - 5. Conviction of an offense involving moral turpitude.
 - 6. Incompetence.
 - 7. Failing to comply with a board order or consent agreement.
 - 8. Wilfully and without legal justification failing to furnish in a timely manner information necessary for the board to conduct an investigation under this chapter that has been requested or subpoenaed by the board.

- F. The board shall serve on the licensee a notice fully setting forth the conduct or inability concerned and returnable at a hearing to be held before the board or an administrative law judge in not less than thirty days, stating the time and place of the hearing.
- G. The board may require a mental and physical examination and make an investigation, including, if necessary, the issuance of subpoenas, the appointment of advisory committees, the employment of expert witnesses, the taking of depositions or otherwise, as may be required fully to inform itself with respect to the complaint.
- H. A person may file a motion with the board for an expedited hearing pursuant to section 41-1092.05.
- I. If the licensee wishes to be present at the hearing in person or by representation, or both, the licensee shall file with the board an answer to the charges in the complaint. The answer shall be in writing, verified under oath and filed within twenty days after service of the summons and complaint.
- J. At the hearing held in compliance with subsection f of this section, a licensee may be present in person together with any counsel and witnesses the licensee chooses.
- K. The board shall issue subpoenas for witnesses it may need and, at the respondent's expense, for witnesses the respondent may request. All provisions of law compelling a person under subpoena to testify are applicable to a hearing held pursuant to this section.
- L. The board shall serve every notice or decision under this article by any method reasonably calculated to effect actual notice on the board and every other party to the action to the party's last address of record with the board. Each party shall inform the board of any change of address within five days after the change.
- M. A licensee who, after a hearing, is found to be guilty by the board of a violation of this chapter is subject to censure, probation or civil penalty as provided in subsection C of this section, suspension of license or revocation of license, or any combination of these, and for the period of time or permanently and under the conditions the board deems appropriate for the protection of the public health and safety and just in the circumstances. The board may charge the costs of formal hearings to the licensee who is in violation of this chapter.
- N. The board shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision. The board shall serve a copy of the decision on the licensee. On the licensee's request, the board shall also transmit to the licensee the record of the hearing.
- O. Except as provided in this subsection, all materials, documents and evidence associated with a pending or resolved complaint or investigation are confidential and are not public records. The following materials, documents and evidence are not confidential and are public records if they are related to resolved complaints and comply with subsection A of this section:
 - 1. The complaint.
 - 2. The response and any rebuttal statements submitted by the licensee.
 - 3. Written or recorded board discussions of the complaint.
 - 4. Written reports of an investigation of a complaint.

- 5. Disposition of the complaint, including any written comments of the board.
- P. This section or any other law making communications between a licensee and the licensee's patient a privileged communication does not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.
- Q. Any action of the board shall be included in the minutes of the meeting at which the action is taken, including any determination by the board not to proceed under this section. The person reporting information to the board shall receive a copy of any final decision.
- R. Pursuant to sections 35-146 and 35-147, the board shall deposit civil penalties collected pursuant to this chapter in the state general fund.
- S. A licensee who is the subject of a disciplinary action may request an informal settlement conference. The licensee must submit a request for an informal settlement conference to the board in writing. The board shall hold an informal settlement conference within fifteen days after it receives a request to do so from the licensee. Only a person with the authority to act on behalf of the board may represent the board at the informal settlement conference. The board representative shall notify the licensee in writing that any written or oral statement made by the licensee at the informal settlement conference, including statements for the purpose of settlement negotiations, is inadmissible in any subsequent hearing. A licensee who participates in an informal settlement conference waives the right to object to the participation of the board representative in the final administrative decision.

32-1745. Prehearing conferences; orders

- A. On the written request of a licensee, the board may schedule a prehearing conference at least ten days before the hearing date scheduled pursuant to section 32-1744. The board shall notify the licensee who requested a prehearing conference of its decision within five business days. If the board agrees to hold a prehearing conference the notification shall include the date, time and place of the conference.
- B. To promote the orderly and prompt conduct of the hearing, the board may use a prehearing conference for the purposes prescribed in section 41-1092.05, subsection F and for any other matter related to the hearing.
- C. The board may conduct all or part of the prehearing conference by electronic means if each party in the prehearing conference can hear and has an opportunity to participate during the entire conference.
- D. After a prehearing conference and before the hearing, the board shall enter an order verbally on the record or in writing. The order shall state the stipulations and admissions made, actions taken and other matters resolved. The board shall modify this order only to prevent manifest injustice, as determined by the board.
- E. Whether or not a prehearing conference is held, the board may issue an order to regulate the conduct of the hearing and to limit the issues to those raised in the pleadings.

32-1746. Records; maintenance; confidentiality

- A. A licensee must allow the board to inspect patient records during normal business hours. Before a licensee may change the location of patient records, the licensee must file a signed statement with the board that discloses the new address where the licensee will maintain the records.
- B. All patient records, examination materials, records of examination grading and performance and transcripts of educational institutions concerning applicants and licensees are confidential and are not public records.

32-1747. Right to examine and copy evidence

In connection with the investigation by the board on its own motion or as the result of information received pursuant to section 32-1744, the board or its duly authorized agents or employees may examine and copy during normal business hours any documents, reports, records or other physical evidence of any person being investigated, or the reports, the records and any other documents maintained by and in possession of any hospital, clinic, physician's office, laboratory, pharmacy or other public or private agency, and any health care institution as defined in section 36-401, if the documents, reports, records or evidence relates to competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice the profession of optometry.

32-1748. Reinstatement; definition

- A. On written application and for good cause shown, the board may issue a new license to a doctor of optometry whose license has been revoked, reissue a license or modify the suspension of any license to practice optometry which has been suspended.
- B. A person applying for reinstatement of a revoked license shall, in addition to the requirements of this section, comply with all initial licensing requirements in existence at the time of his application for reinstatement, except those requirements which are inconsistent with this section.
- C. The board shall not issue a new license or reissue a license to a doctor of optometry whose license has been revoked until two years after the effective date of the revocation, except that if the revocation is based only on section 32-1743, paragraph 1 and the conviction is ultimately reversed on appeal, the board shall enter an order vacating the revocation.
- D. For the purposes of this section, "good cause shown" means that the person making application for reinstatement or reissuance shall demonstrate through substantial evidence presented to the board that he is completely rehabilitated with respect to the conduct which was the basis of the revocation or suspension of his license. Demonstration of rehabilitation shall include:
 - 1. Evidence that the person has not engaged in any conduct during the revocation or suspension period which, if he had been licensed during that period, would have constituted a basis for revocation or suspension pursuant to section 32-1743.
 - 2. Evidence that, with respect to any criminal conviction which constituted any part of the basis for the previous revocation or suspension, his civil rights have been fully restored pursuant to statute or other applicable recognized judicial or gubernatorial order.

- 3. Evidence that restitution has been made to any aggrieved party as ordered by a court of competent jurisdiction.
- 4. Other evidence of rehabilitation the board deems appropriate.

32-1749. Judicial review and appeal

- A. A doctor of optometry aggrieved by a final decision of the board in a disciplinary proceeding conducted pursuant to section 32-1744 is entitled to judicial review.
- B. Such person may institute proceedings for review by filing a verified petition in the superior court in Maricopa County within thirty days after service of the final decision of the board. A copy of the petition shall be served upon the board.
- C. Within thirty days after service of the petition, or within such further time as the court allows, the board shall transmit to the court the original or a certified copy of the board's entire proceedings under review, but by stipulation of the parties the record may be shortened.
- D. If, before the date set for hearing, application is made to the court for leave to present supplemental evidence on the issues in the action, and it is shown to the satisfaction of the court that supplemental evidence is material and that there were good reasons for failure to present it in the proceeding before the board, the court may order that supplemental evidence be taken before the board upon conditions the court deems proper. The board may modify its findings and decision by reason of such supplemental evidence and shall file with the reviewing court, to become a part of the record, the original or a certified copy of such supplemental proceedings together with any modification or change in its findings or decision as the result thereof.
- E. The review shall be conducted by the court without a jury and shall be confined to the record, except that the court may take testimony and receive evidence with respect to alleged irregularities in procedure before the board not shown in the record. The court, upon request, shall hear oral argument and receive written briefs.
- F. The court may affirm the decision of the board or remand the case for further proceedings or it may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the decision is contrary to law or is without or in excess of the jurisdiction of the board or is arbitrary and capricious in that it is unsupported by substantial evidence.
- G. The petitioner or the board may secure a review of any final judgment of the superior court. Such appeal shall be taken in the manner required by law for appeals from the superior court in other civil cases.
- H. The board, upon application, or the superior court, on such terms and conditions as may appear proper, may stay the order of the board, in whole or in part, during the pendency of a review by the superior court and any appeal, upon a clear and convincing showing by the petitioner and after a full evidentiary hearing that such stay would not constitute a threat to the public health, welfare or safety and that failure to grant the stay would work a substantial injustice on the petitioner.

32-1750. Allegations sufficient to charge violation

In charging a person in a complaint for an injunction or in an affidavit, information or indictment with a violation of this chapter by practicing the profession of optometry without a license, it is sufficient to charge

that he did upon a certain day and in a certain county engage in the practice of the profession of optometry, not having a valid license to do so, without averring any more particular facts concerning the act.

32-1751. Cease and desist orders; injunctive relief

- A. In addition to all other remedies, if after conducting an investigation, either on complaint or otherwise, and for good cause shown it appears to the board that any person has engaged in or is engaging in an act, practice or transaction that violates this chapter or any rule or order of the board, the board may do either of the following:
 - 1. Serve on the person by certified mail or personal service a cease and desist order requiring the person to cease and desist immediately, on receipt of the notice, from engaging in the act, practice or transaction. If the board issues a cease and desist order it shall conduct a hearing within thirty days to determine whether the order should be continued or eliminated and to determine whether the board should take other appropriate action.
 - 2. Through the attorney general or the county attorney of the county in which the violation is alleged to have occurred apply to the superior court in that county for an injunction restraining that person from engaging in the violation.
- B. The court shall issue a temporary restraining order, a preliminary injunction or a permanent injunction without requiring the board to post a bond.
- C. Service of process may be on the defendant in any county of this state where the defendant is found.
- D. Violation of an injunction is punishable as contempt of court.
- E. An injunction does not relieve a person practicing the profession of optometry without a license from criminal prosecution but is in addition to any remedy provided for the criminal prosecution.

32-1752. Violation; classification

A person who practices the profession of optometry without at the time having a valid license to practice, or who files or attempts to file with the board of optometry practice locations under a license issued to another, claiming to be the person entitled to practice under such license, is guilty of a class 2 misdemeanor.

32-1753. Practice designations; definition

- A. A licensee must practice the profession of optometry only as either:
 - 1. A sole practitioner.
 - 2. A partner with other health professionals.
 - 3. A professional limited liability company in which health professionals collectively possess at least fifty-one per cent of the ownership interest.
 - 4. A professional corporation in which health professionals collectively possess at least fifty-one per cent of the ownership interest.

- 5. An employee or independent contractor in any of the categories listed in this subsection.
- B. A licensee must practice only under the name under which the licensee is registered with the board, which may include a trade name.
- C. For purposes of this section, "health professional" means a currently licensed member of the health professions as defined in section 32-3101.

Article 4 – Referral

32-1761. Referral of patient to licensed physician required on finding of certain symptomatic conditions

An optometrist licensed pursuant to this chapter and providing service to any person shall refer such person to a physician licensed pursuant to chapter 13 or 17 of this title when such optometrist finds an indication of the presence of a disease or condition of the eye requiring treatment outside the scope of practice of the profession of optometry as defined in section 32-1701.

Article 5 - Replacement Soft Contact Lenses

32-1771. Definitions

For purposes of this article, except as the context otherwise requires:

- 1. "Nonresident dispenser" means a person not domiciled in this state who is licensed in the person's state of domicile to dispense replacement soft contact lenses and who dispenses replacement contact lenses to patients in this state.
- 2. "Qualified dispenser" means a nonresident dispenser holding a current registration with the board.
- 3. "Replacement soft contact lenses" means hydrophilic lenses requiring no fitting or adjustments that are dispensed as packaged and sealed by the manufacturer.

32-1772. Exemptions

This article does not apply to:

- 1. Physicians licensed under chapter 13 or 17 of this title.
- 2. Doctors of optometry licensed under chapter 16 of this title.
- 3. Dispensing opticians licensed under chapter 15.1 of this title.
- 4. A pharmacist and a pharmacy licensed under chapter 18 of this title.

32-1773. Registration of nonresident dispensers; qualifications; fee

A. A nonresident dispenser may register with the board to dispense replacement soft contact lenses. Registration shall be effective for two years and subject to renewal.

- B. The board shall set a fee for registration and for renewal of registration.
- C. Applicants for registration or renewal shall provide to the board at the time for registration or renewal on a form prescribed by the board their name, address, name of principal corporate officers, if any, and name of all general partners, if any. The registration shall be accompanied by the required fee and a certified copy of the applicant's license from the licensing authority in their state of domicile and other information the board requires.
- D. Registered dispensers shall submit a report to the board within thirty days of the change of its address, any officer, partner or pharmacist or of the status of its license in the state of domicile.
- E. Registered dispensers shall maintain at all times a valid unexpired license, permit or registration to conduct the business of a pharmacist or pharmacy in their state of domicile.
- F. The board may suspend, revoke or refuse to renew the registration of a registered dispenser or impose a civil sanction against a registered dispenser or any other person who:
 - 1. Violates this article.
 - 2. Obtained a registration by fraudulent or other material misrepresentation.
 - 3. Has been convicted of a felony.
 - 4. Has had their license suspended or revoked in any other jurisdiction.
 - 5. Violates any other Arizona or federal law regulating the dispensing of replacement contact lenses.
 - 6. Commits an offense in another jurisdiction which would be grounds for revocation or suspension in this jurisdiction.
- G. The board shall issue a complaint to the registrant and set a hearing, which shall conform to the requirements of title 41, chapter 6.

32-1774. Dispensing replacement soft contact lenses by qualified dispensers; prescriptions; filling

- A. A nonresident dispenser may not fill a prescription for replacement soft contact lenses without first having registered with the board. A qualified dispenser may fill a prescription for replacement soft contact lenses only as provided in this section.
- B. A qualified dispenser may fill a prescription for replacement soft contact lenses that meets all of the following requirements:
 - 1. Conforms to state and federal statutes and regulations governing those prescriptions and includes the name, office address, signature and state license number of the prescribing physician or optometrist.
 - 2. Explicitly states the date of issuance.

- 3. Explicitly states that the prescription is for contact lenses and includes the lens brand name, type, tint and all other specifications necessary to accurately dispense the prescription.
- C. The qualified dispenser shall fill the prescription with the exact lenses prescribed and no substitutions shall be made. The expiration date of the prescription shall be the earlier of the expiration date provided by the prescribing physician or optometrist or one year after the date of issuance. The qualified dispenser shall fill a refill of a prescription that is within sixty days of its expiration date with no more than the sufficient quantity of replacement soft contact lenses needed through the expiration date. The qualified dispenser shall ensure that prescriptions are filled accurately.
- D. The qualified dispenser shall provide the following or substantially equivalent written notification to the patient whenever contact lenses are supplied: Warning: If you are having any unexplained eye discomfort, watering, vision change or redness, remove your lenses immediately and consult your eye care practitioner before wearing your lenses again.
- E. Any advertisement by a qualified dispenser for replacement soft contact lenses shall include all fees, charges and costs associated with the purchase of replacement soft contact lenses from the qualified dispenser.
- F. During its regular hours of operation, but at least six days per week and for at least forty hours per week, a qualified nonresident dispenser shall maintain a toll free telephone service to facilitate communication between patients in this state and a registered dispenser who has access to the patient's records. This toll free number shall be disclosed on a label affixed to each container of replacement soft contact lenses dispensed to patients in this state.
- G. Qualified dispensers shall maintain records of replacement soft contact lenses dispensed to patients in this state separate from records for patients in other states such that the records for patients in this state are readily retrievable. Records shall be maintained for a period of at least three years. Records shall be available for inspection at the board's request.

Arizona Administrative Code Title 4: Commerce, Professions and Occupations Chapter 21 Board of Optometry

ARTICLE 1. GENERAL PROVISIONS

R4-21-101. Definitions

In addition to the definitions established in A.R.S. § 32-1701, the following terms apply to this Chapter:

- 1. "ACOE" means the Accreditation Council on Optometric Education.
- 2. "Applicant" means an individual who applies for a license to practice optometry in this state under A.R.S.§§ 32-1722 and 32-1723, but has not yet been granted the license.
- 3. "Certificate of special qualification" means a document that specifies that the holder may prescribe, administer, and dispense one or more of pharmaceutical agent categories identified in A.R.S. § 32-1728 (B) (1), (2), or (3) or may practice optometry without the use of pharmaceutical agents
- 4. "Correspondence course" means continuing education delivered by video, audio, electronic or digital means, scientific journals or periodicals, or any other media as approved by the Board.

- 5. "Incompetence" means lack of professional skill, fidelity, or physical or mental fitness, or substandard examination or treatment while practicing the profession of optometry.
- 6. "Negligence" means conduct that falls below the standard of care for the protection of patients and the public against unreasonable risk of harm and that is a departure from the conduct expected of a reasonably prudent licensee under the circumstances.
- 7. "Low-vision rehabilitation" means evaluation, diagnosis, management, and treatment of a limited vision, including the prescribing of corrective spectacles, contact lenses, prisms, or filters; or the employment of any means for the adaptation of lenses.
- 8. "Pharmaceutical" or "pharmaceutical agent" means a prescription or nonprescription substance, or a schedule III controlled substance used for examination, diagnosis or treatment of conditions of the human eye and its adnexa. A.R.S. §32-1701(5). Pharmaceutical and pharmaceutical agents include the following categories:
 - a. "Topical diagnostic agents" means externally applied medicine used to diagnose disease and conditions of the eye and its adnexa;
 - b. "Topical diagnostic and therapeutic pharmaceutical agent means externally applied medicines used to diagnose, treat, and manage disease of the eye and its adnexa;
 - c. "Oral pharmaceutical" means an ingested medication used to diagnose, treat, and manage disease of the eye and its adnexa; and
 - d. "Anti-anaphylactic agent" means an intramuscular dose of epinephrine used for the emergency treatment of allergic reactions and delivered by a self-injecting syringe.
- 9. "Practice management" means the study of management of the affairs of optometric practice.
- 10. "Vision therapy" means an individualized course of treatment and education prescribed to improve conditions of the human eye or adnexa. Vision therapy is designed to help individuals learn, relearn, or reinforce specific vision skills, including eye movement control, focusing control, eye coordination, and the teamwork of the two eyes. Vision therapy includes, but is not limited to: optical, non-optical, electronic, or other treatments.
- 11. "Vision rehabilitation" means development of an individual plan specifying clinical therapy and instruction in compensatory approaches.

R4-21-102. Repealed

R4-21-103. Fees

- A. In addition to fees established by A.R.S. § 32-1727, the Board shall charge license fees as follows:
 - 1. License issuance fee of \$400 that is prorated from date of issuance to date of renewal.
 - 2. Biennial license renewal fee of \$400 that is prorated to the licensee's renewal date if less than biennial renewal period.
 - 3. Late renewal fee of \$200.

- B. A person requesting public records shall pay the following fees for searches and copies of Board records under A.R.S. §§ 39-121.01 or 39-121.03:
 - 1. Noncommercial copy:
 - a. 5ϕ per name and address for directory listings or 15ϕ each if printed on labels, and
 - b. 25¢ per page for other records.
 - 2. Commercial copy:
 - a. 25ϕ per name and address for directory listings or 35ϕ each if printed on labels, and
 - b. 50¢ per page for other records.
 - 3. The Board shall waive fees for other government agencies.
 - 4. Pamphlets containing optometry statutes and rules: \$5.
 - 5. Written or certified license verifications: \$10.
 - 6. Duplicate or replacement renewal receipts: \$10.
- C. An applicant for registration or biennial registration renewal as a nonresident contact lens dispenser shall pay to the Board a registration fee of \$500.

ARTICLE 2. LICENSING PROVISIONS

R4-21-201. Licensure

- A. A person applying for licensure shall submit the following information on a licensure application form provided by the Board not later than 30 days before the date of the Board-designated jurisprudence exam:
 - 1. The applicant's full name and social security number;
 - 2. The applicant's place and date of birth;
 - 3. The applicant's current mailing address;
 - 4. The applicant's residence addresses for the past five years;
 - 5. The applicant's educational background;
 - 6. The applicant's previous optometric experience;
 - 7. The applicant's work experience or occupation for the past five years;
 - 8. A list of the applicant's previous state board examinations;
 - 9. A list of the states in which the applicant is or has been licensed and, if a license is no longer valid, the reasons why;
 - 10. Whether the applicant has ever been denied the right to take an examination for optometric licensure by any state or jurisdiction;
 - 11. Whether the applicant has ever been refused an optometric license or renewal in any state or jurisdiction;

- 12. Whether the applicant has ever had a license or certificate of registration to practice optometry suspended or revoked by any optometric licensing agency, board, or equivalent;
- 13. Whether any disciplinary action has ever been instituted against the applicant by any optometric licensing agency or equivalent;
- 14. Whether the applicant has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country;
- 15. Whether the applicant has been addicted to narcotic substances or habitually abused alcohol within the last 10 years;
- 16. Whether the applicant is presently addicted to narcotic substances or habitually abuses alcohol;
- 17. The applicant shall submit a complete explanation of the details if the answer to any of the questions in subsections (A)(12) through (A)(16) is affirmative;
- 18. A statement sworn under oath by the applicant verifying the truthfulness of the information provided; and
- 19. A two inch by three inch passport style photograph of the applicant taken within the past six months.
- B. In addition to the requirements of subsection (A), an applicant for licensure shall submit:
 - 1. A completed Arizona Department of Public Safety fingerprint card accompanied by a separate nonrefundable fee in the form of a cashier's check, certified check, or money order in an amount determined by and payable to the Arizona Department of Public Safety;
 - 2. The application fees required pursuant to A.R.S. §32-1727;
 - 3. Evidence of the successful completion of an approved course of study under A.R.S. §32-1722(A)(3).

Acceptable evidence includes:

- a. An official transcript showing that the applicant has passed the required optometry courses; or
- b. A certificate of completion issued by the sponsoring institution specifying the subject matter and hours completed; and
- 1. An official transcript received directly from the optometry school from which the applicant graduated with a degree in optometry.
- C. An applicant for licensure by endorsement shall submit at least 30 days before the date of the Board designated jurisprudence exam:
 - 1. A license verification from all states in which the endorsement applicant has practiced in the five years before the date of application that provides the following information:
 - 2. Current status of the license;

- 3. Scope of practice; and
- 4. Date of licensure, license number, whether any disciplinary action has been taken, complaints against the licensee on file, and any pending investigations.
- D. Review and approval of regular and endorsement applications. The Board may approve a regular or endorsement application based upon any combination of education or experience as specified in A.R.S.§§ 32-1722 and 1723.

R4-21-202. License Examination

- A. All applicants for licensure shall take a Jurisprudence exam. A passing score on the examination is at least 75% and above.
- B. An applicant who fails the Jurisprudence examination may retake the examination one time within six months from the date of the original exam. An applicant who fails the Jurisprudence exam a second time shall wait at least six months to submit another application with required fees.
- R4-21-203. Time-frames for Licensure, Renewal of License, Certificates of Special Qualification, and Course of Study Approval
- A. For each type of license, certificate, approval, or renewal issued by the Board, the overall time-frame described in A.R.S. §41-1072(2) is listed in Table 1.
- B. For each type of license, certificate, approval, or renewal issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins on the date the Board receives an application.
 - 1. If the application is not administratively complete, the Board shall send a deficiency notice to the applicant.
 - a. The deficiency notice shall state each deficiency and the information needed to complete the application and documents.
 - b. The deficiency notice shall require the applicant to respond to the deficiencies within the time provided in Table 1 beginning on the mailing date of the deficiency notice.
 - 2. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information.
 - 3. If the application is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
 - 4. If the applicant fails to respond timely and completely to the deficiency notice, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.
 - 5. An applicant may request an extension of the time to satisfy the deficiency notice.

- C. For each type of license, certificate, approval, or renewal issued by the Board, the substantive review time-frame described in A.R.S. §41-1072(3) is listed in Table 1 and begins on the date of receipt of the notice of administrative completeness.
 - 1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. The applicant shall submit to the Board the requested additional information within the time provided in Table 1.
 - 2. If, under A.R.S. § 32-1722(C), the Board determines that a hearing is needed to obtain information on the character of an applicant, the Board shall include a notice of the hearing in its comprehensive written request for additional information.
 - 3. The Board shall issue a written notice of denial of a license, renewal, certificate, or approval if the Board determines that the applicant does not meet all of the substantive criteria required by statute or this Chapter.
 - 4. If the applicant meets all of the substantive criteria required by statute and this Chapter for licensure, renewal, certificate, or approval, the Board shall notify the applicant that the qualifications for licensure have been met and the license shall be issued as specified in R4-21-207 after receipt of the license issuance fee.
- D. A period of time as prescribed in this Section does not include the day of the initial act, event, or default. The time period begins on the date of personal service, receipt, or the date shown as received on a certified mail receipt. The last day of the time-frame is included unless it falls on a Saturday, Sunday, or state holiday in which case, the time period ends on the next business day.

R4-21-204. License Renewal

- A. To renew a license, an applicant shall submit the renewal fee under R4-21-103 and the following information to the Board:
 - 1. Any change in the applicant's mailing or residential address;
 - 2. A list of all permanent and temporary practice addresses and phone numbers;
 - 3. A list of continuing education courses and if requested, proof of attendance and course completion pursuant to R4-21-208;
 - 4. Whether the applicant has ever been denied the right to take an examination for optometric licensure by any state or jurisdiction within the preceding two years;
 - 5. Whether the applicant has ever been refused an optometric license or renewal in any state or jurisdiction;
 - 6. Whether the applicant has had a license or certificate of registration to practice optometry suspended or revoked by any optometric licensing agency, board, or equivalent within the preceding two years;
 - 7. Whether any disciplinary action has been instituted against the applicant by any optometric licensing agency or equivalent within the preceding two years;

- 8. Whether the applicant has been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country within the preceding two years, and if so, an explanation;
- 9. Whether the applicant has been addicted to narcotic substances or habitually abused alcohol within the preceding two years;
- 10. Whether the applicant is presently addicted to narcotic substances or habitually abuses alcohol;
- 11. Whether the applicant has been sued for malpractice within the preceding two years;
- 12. Whether the applicant has had the authority to prescribe, dispense, or administer medication limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency within the preceding two years;
- 13. A complete explanation of the details if the answer to any of the questions in subsections (A)(4) through (A)(12) is affirmative; and
- 14. A statement verifying the truthfulness of the information provided.
- B. All certificates held by an applicant remain in effect upon license renewal.
- C. A license is void if an applicant does not submit a completed renewal application and renewal fee under R4-21-103 within four months from the date of expiration.

R4-21-205. Course of Study Approval

- A. Any educational institution may apply to the Board for approval of a course of study covering didactic education, pharmacology, and clinical training in the examination, diagnosis, and treatment of conditions of the human eye and its adnexa, and prescribing, dispensing, and administering pharmaceutical agents. The institution's authorized representative shall provide the following information on the application:
 - 1. The name and address of the educational institution;
 - 2. Certification that the course of study is equivalent in scope and content to the curriculum currently offered to graduating students by the educational institution;
 - 3. The names and qualifications of faculty and staff;
 - 4. A course outline that includes:
 - a. Didactic pharmacology and clinical training in the diagnosis and treatment of:
 - i. Anterior segment disease;
 - ii. Posterior segment disease;
 - iii. Glaucoma: and
 - iv. Systemic diseases and emergencies with all pharmaceutical agents and the specific agents listed in A.R.S. §32-1706(A), (B), (C), and (E).
 - b. A minimum of 12 hours of pharmacologic principles in the side effects, adverse reactions, drug interactions, and use of systemic antibiotics, analgesics, antipyretics,

antihistamines, over-the-counter medications, and medications and procedures to counter the affect of adverse reactions.

B. To be approved, an educational institution shall grant a certificate of completion or its equivalent for the course of study if a student obtains a score of at least 75% on a closed book, proctored, written examination. The examination shall cover prescribing, dispensing, and administering pharmaceutical agents, and be commensurate with courses of study taken by current doctoral candidates in colleges of optometry.

R4-21-206. Use of Pharmaceutical Agents

- A. If a licensee does not currently hold any certificate of special qualification the Board shall grant a licensee the authority to prescribe, administer, and dispense pharmaceutical agents pursuant to A.R.S. §32-1706 if the licensee:
 - 1. Takes and passes a course of study that meets the requirements of R4-21-205 (A); and
 - 2. Provides the Board with a copy of current CPR certification;
- B. Licensees holding a license issued prior to July 1, 2000, and not holding any certificate of special qualification shall not prescribe any pharmaceutical agents pursuant to A.R.S. 32-1728. The Board shall issue a certificate of special qualification specifying use of no pharmaceutical agents to the licensee.
- C. A licensee who is denied certification of special qualification by the Board may appeal the decision by filing an appeal with the Board within 30 days following receipt of the notice of denial or disapproval. The hearing shall be conducted under A.R.S. Title 41, Chapter 6, Article 10.

R4-21-207. Issuance and Display of License; Surrender of License

- A. License display. A licensee shall conspicuously display the appropriate Board-issued certificate of limited qualification or wall license at each location.-
- B. A licensee shall surrender to the Board all licenses, certificates, and duplicates upon disciplinary order of the Board.

R4-21-208. Continuing Education Requirements; Program Criteria and Procedures

- A. A licensee shall complete 32 hours of continuing education per biennial license renewal period as follows:
 - 1. The licensee shall have at least four hours in the area of diagnosis, treatment, and management of disease of the human eye and adnexa and pharmaceutical use appropriate to the authority held by the licensee.
 - 2. The licensee shall not claim more than 12 hours by correspondence courses identified as self-instructed continuing education.
 - 3. The licensee shall not claim more than four hours in the area of practice management.
 - 4. The licensee may claim one credit hour of continuing education for each day of instruction in a full-time program approved under R4-21-205, or for less than a full-time program on a pro-rata basis.
 - 5. The licensee shall not carry over hours accumulated from any previous renewal period.

- 6. A licensee shall not use courses taken before graduation from an accredited optometry school as credit for continuing education requirements.
- 7. A licensee who is licensed for the first time in the state shall obtain continuing education hours on a pro-rata basis.
- B. The Board shall grant a licensee continuing education credit for the following:
 - 1. Participating in an internship, residency, or fellowship at a teaching institution approved by the Association of Schools and Colleges of Optometry, Accreditation Council on Optometric Education, National Board of Examiners in Optometry, or the American Optometric Association;
 - 2. Participating in a medical education program designed to provide understanding of current developments, skills, procedures, or treatments related to the practice of optometry that is provided by an organization or institution accredited by the Association of Schools and Colleges of Optometry or the Accreditation Council on Optometric Education or approved by the Council on Optometric Practitioner Education, or a national, regional or local Optometric association; and
 - 3. Publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of Optometry. The licensee may receive one credit hour for each hour preparing, writing, and presenting materials to a maximum of four hours per renewal period.
- C. A licensee may apply to the Board for approval of continuing education, not otherwise authorized, by submitting to the Board an application including a description of the program content, instructors and their qualifications, sponsor of the program, if any, conditions of availability, and time and place offered.

R4-21-209. Discretionary Exemption

A. The Board may reduce the number of hours of continuing education required or grant an extension of time for completion of all or part of the continuing education requirement for a particular biennial licensure period at the written request of the licensee. The Board shall grant an extension to a licensee who has suffered a serious or disabling illness that prevented the licensee from complying with the requirements of R4-21-208 during the 12 months immediately before the license renewal date.

R4-21-210. Repealed

Table 1. Time-frames (in calendar days)

Type of License	Overall Time- frame	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive	Time to Respond to Request for Additional Information
Initial Licensure by Examination A.R.S. §32-1722	90	30	20	60	20
Initial Licensure by endorsement R4-21-201	120	60	20	60	20
Renewal of License R4-21-204	90	60	20	30	20

Board Approved Course of Study R4-21-205	180	90	20	90	20
Certificates of Special Qualification R4-21-206	120	60	20	60	20
Continuing Education Program Approval R4-21-208	120	60	20	60	20
Registration of nonresident dispenser of replacement soft contact lenses A.R.S. §32-1773	120	60	20	60	20

ARTICLE 3. REGULATORY PROVISIONS

R4-21-301. Styles of Optometric Practice; Staff Responsibility

- A. A licensee shall practice the profession of optometry only as a sole practitioner, a partner with other licensees, an employee of a licensee, or an optometric professional corporation. In any of these styles of practice, a licensee may practice as an independent contractor and shall practice only under the name, which may include a trade name, under which the licensee is registered with the Board.
- B. A licensee practicing the profession of optometry as an independent contractor shall:
 - 1. Be solely responsible for patient examination, diagnosis, and treatment and the procedures used for scheduling and recordkeeping;
 - 2. Conduct the practice of optometry free of any control by a person not licensed to practice the profession of optometry and
 - 3. Ensure that the licensee's staff complies with the requirements of this Chapter and A.R.S. Title 32, Chapter 16.

R4-21-302. Advertising

- A. A licensee shall not knowingly make, publish, or use an advertisement, printed, oral, or otherwise, that contains any false, fraudulent, deceptive, or misleading representations concerning ophthalmic goods or optometric services, or the manner of their sale or distribution.
- B. A licensee shall only advertise as a specialist if the licensee has been certified by the American Academy of Optometry as a diplomat in that specialty or as a fellow in the College of Optometrists in Vision Development. A licensee may advertise that the licensee has a practice limited in some way, if the licensee does not use the term "specialist" or any derivative of that term.
- C. A licensee shall have knowledge of and be professionally responsible for the contents of any advertisement or directory that includes the name and address of the licensee.
- R4-21-303. Affirmative Disclosures in Advertising and Practice; Warranties, Service, or Ophthalmic Goods Replacement Agreements
- A. An advertisement for or by a licensee offering optometric goods or services shall clearly indicate within the advertisement:
 - 1. Whether spectacle lenses or contact lenses are single vision, multi-focal, or other;

- 2. Whether the price includes the frame and lenses for spectacles;
- 3. Whether the price includes an eye examination;
- 4. Whether the price for contact lenses includes all dispensing fees, follow-up care, a contact lens accessory kit, and, if an accessory kit is included, the specific features of the kit;
- 5. Whether restrictions are imposed upon delivery, if delivery time is advertised;
- 6. The applicable refund policy if refunds are advertised; and
- 7. If applicable, a statement that other restrictions apply.
- B. A licensee shall inform a patient of all professional fees before providing treatment.
- C. A licensee who refers a patient to a facility in which the licensee or a member of the licensee's family has an ownership or employment interest shall advise the patient at the time of the referral.
- D. A licensee who charges a patient a fee for a warranty, or service or ophthalmic goods replacement agreement, shall give the patient a written copy of the warranty, or service or ophthalmic goods replacement agreement, that explains the coverage and any limitations. The licensee shall document the transaction by making a written entry on the patient's records, and by placing a copy of the warranty, or service or ophthalmic goods replacement agreement, signed by the patient, in the patient's records.

R4-21-304. Vision Examination Standards; Records

- A. A licensee shall conduct all eye examinations in accordance with the current standards of care.
- B. A licensee shall establish and maintain a complete and legible record of each examination including all findings. The Board shall consider an illegible record to be an incomplete examination. A licensee shall ensure that a patient record reflects the name of the person who makes each entry, is maintained for at least seven years after the last contact with a patient and includes:
 - 1. Complete case history;
 - 2. Visual acuity of each eye: entering, and best corrected;
 - 3. Ocular health examination;
 - 4. Assessment of intraocular and extra-ocular muscle function;
 - 5. Objective or subjective refraction of the eyes;
 - 6. Diagnosis, treatment, and disposition;
 - 7. The type and dosage of each use of a pharmaceutical agent;
 - 8. Any final prescription given; and
 - 9. Any corrective procedure program prescribed.

- C. A licensee who discontinues practice for any reason shall arrange for patient records to be available to a patient for seven years from the date the licensee's practice is discontinued and shall notify the Board of the permanent location of patient records from that practice before discontinuing practice. A licensee who acquires or succeeds to a practice or patient records of another licensee who has discontinued practice shall maintain the records or make arrangements for the records to be available to a patient for seven years after the practice was discontinued.
- D. A licensee shall, upon written request of a patient, transmit a copy of the patient's requested records within five business days of the request, to any person designated by the patient. The licensee may charge a fee to cover clerical and mailing costs. The licensee shall maintain a record of the transfer or transmittal for seven years from the date of the release of the records.
- E. Any record required to be maintained by a licensee may be maintained in an electronic format if:
 - 1. The electronic record accurately reflects the information contained in the written record as the record was first generated and in its final form as an electronic record or otherwise; and
 - 2. The electronic record remains accessible.

R4-21-305. Prescription Standards; Release to Patients

- A. A licensee shall not charge a patient a fee in addition to the examination fee as a condition for release of the patient's prescription. The licensee shall ensure that an optometric prescription includes:
 - 1. For ophthalmic lenses other than contact lenses:
 - a. The refractive power of the lenses;
 - b. The interpupillary distance;
 - c. The printed name of the licensee, the location of the office, and the signature of the licensee; and
 - d. The date of the examination and the expiration date of the prescription;
 - 2. For contact lenses, including plano lenses:
 - a. For a patient who has not completed a trial period appropriate under the circumstances and desires to have a prescription, the information required for the patient to purchase the trial lenses at another optical establishment or location;
 - b. If a patient has completed a trial period appropriate under the circumstances for the lenses prescribed, all information necessary to accurately reproduce the contact lenses;
 - c. The printed name practice address, telephone number, facsimile number, and signature of the licensee; and
 - d. The name of the patient, date of the examination, the issue and expiration date of the prescription, the power, material, or manufacturer, or both, of the prescribed contact lens, the base curve or appropriate designation of the prescribed contact lens, the diameter, when appropriate, of the prescribed contact lens, and in the case of a private label contact lens, the name of the manufacturer, trade name of the private label brand and, if applicable, trade name of equivalent brand name;
 - 3. For pharmaceutical agents:
 - a. The date of issuance:

- b. The name and address of the patient;
- c. The name, strength, and quantity;
- d. The directions for use;
- e. The name and address of the prescribing licensee;
- f. The written signature of the prescribing licensee;
- g. DEA number of the prescribing licensee; and
- h. Two adjacent signature lines, under the left of which are the printed words "dispense as written", and under the right, the printed words "substitution permissible";
- 4. A prescription may include any additional information the licensee considers necessary.
- B. A licensee who dispenses or directs the dispensing of ophthalmic materials shall ensure that a prescription is filled accurately.
- C. A licensee shall be available to verify that a prescription written by the licensee but dispensed by another provider of ophthalmic goods is accurately filled. The licensee may charge a fee for verification of the accuracy or quality of ophthalmic goods dispensed by another provider.

R4-21-306. Low-Vision Rehabilitation and Vision Therapy

A licensee may employ any objective or subjective means or methods other than surgery, to diagnose or treat with pharmaceutical agents any visual, muscular, neurological, or anatomical anomaly of the eye. The licensee may use any instrument or device to train the visual system or correct any abnormal condition of the eye, including low-vision rehabilitation and vision therapy.

R4-21-307. Repealed

R4-21-308. Rehearing or Review of Administrative Decision

- A. Under A.R.S. Title 41, Chapter 6, Article 10, Uniform Administrative Appeals Procedures, the Board may, upon written request, reconsider a decision for any of the following causes materially affecting the moving party's rights:
 - 1. Irregularity in the administrative proceedings of the Board, hearing officer, or prevailing party, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
 - 2. Misconduct of the Board, hearing officer, or prevailing party;
 - 3. Accident or surprise that could not have been prevented by ordinary prudence;
 - 4. Material evidence, newly discovered, that with reasonable diligence could not have been discovered and produced at the original hearing;
 - 5. Excessive or insufficient penalties;

- 6. Error in the admission or rejection of evidence or other errors of law occurring in the course of an administrative hearing; or
- 7. The decision is not justified by the evidence or is contrary to law.
- B. The Board may reconsider all or any of the issues decided for any of the reasons in subsection (A).
- C. The Board may on its own initiative, within 30 days, reconsider its decision.
- D. If the Board makes a specific finding in a decision that the immediate effectiveness of the decision is necessary for the preservation of the public peace, health, or safety and that a rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without opportunity for a rehearing.
- E. The terms "contested case" and "party" have the same meaning as in A.R.S. Title 41, Chapter 6.

ARTICLE 4. REPEALED

R4-21-401.	Repealed
R4-21-402.	Repealed
R4-21-403.	Repealed
R4-21-404.	Repealed
R4-21-405.	Repealed
R4-21-406.	Repealed

ARTICLE 5. EXECUTIVE DIRECTOR DUTIES

R4-21-501. Issuing Licenses

- A. The executive director or the Board's designee may decide whether to approve an application to practice the profession of optometry and shall issue a license if all of the requirements for licensure have been met as evidenced by the application and governing statutes.
- B. The executive director or the Board's designee shall report to the Board at each regularly scheduled Board meeting a summary of the number and type of applications approved and licenses issued.

R4-21-502. Denial of License

- A. The executive director or the Board's designee shall deny a license to an applicant who does not meet the minimum requirements to practice the profession of optometry in Arizona.
- B. The executive director or the Board's designee shall provide to the Board at each regularly scheduled Board meeting a list of applicants who were denied a license.

R4-21-503. Issuing Subpoenas

- A. The executive director or the Board's designee may issue a subpoena for the attendance of witnesses and the production of books, records, documents or any other evidence relevant to an investigation or hearing.
- B. The executive director or the Board's designee shall report to the Board at each regularly scheduled Board meeting a summary of the number and type of subpoenas issued.

R4-21-504. Continuing Education Approval

- A. The executive director or the Board's designee may approve continuing education programs under R4-21-208.
- B. The executive director or the Board's designee shall provide to the Board at each regularly scheduled Board meeting a list of approved continuing education programs.

OTHER RELATED STATUTES:

32-3201. Definitions

In this chapter, unless the context otherwise requires:

- 1. "Health profession regulatory board" means any board that regulates one or more health professionals in this state.
- 2. "Health professional" means a person who is certified or licensed pursuant to chapter 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29, 33, 34, 35, 39 or 41 of this title, title 36, chapter 6, article 7 or title 36, chapter 17.

32-3202. License or certificate suspension

The certificate or license of a health professional who does not renew the certificate or license as prescribed by statute and who has been advised in writing that an investigation is pending at the time the certificate or license is due to expire or terminate does not expire or terminate until the investigation is resolved. The license is suspended on the date it would otherwise expire or terminate and the health professional shall not practice in this state until the investigation is resolved. The certificate is suspended on the date it would otherwise expire or terminate and the health professional shall not practice as a certified health professional in this state until the investigation is resolved.

32-3203. Malpractice claim investigation

On receipt of a malpractice report and a copy of a malpractice complaint as provided in section 12-570, the health profession regulatory board shall initiate an investigation into the matter to determine if the licensee is in violation of the statutes or rules governing licensure.

32-3204. Experimental diagnosis, therapy or treatment; implied consent; definition

- A. Notwithstanding any provision of this title to the contrary, a health professional, within the scope of that person's profession, may use an experimental diagnosis, therapy or treatment on a patient who is unable to make or communicate health care decisions and who has an emergent life threatening condition if the requirements of 21 Code of Federal Regulations parts 50, 56, 312, 314, 601, 812 and 814 have been met.
- B. A health professional who performs an experimental diagnosis, therapy or treatment pursuant to this section is deemed to have obtained the patient's implied consent for the purposes of title 12, chapter 5.1, article 1.
- C. For purposes of this section, "experimental diagnosis" means the pharmaceuticals, devices and technology used to diagnose patients.

32-3205. Board disciplinary action; voting requirements

If a disciplinary action requires a vote of board members, a health profession regulatory board shall conduct that vote by roll call. The board shall maintain a record of each member's vote. This section does not prohibit a board from using a consent agenda.

32-3206 Disciplinary action; information; disclosure

- A. At least ten business days before a disciplinary interview or a hearing, if the board does not hold a disciplinary interview, the health profession regulatory board shall notify the health professional and, at that person's request, the board shall provide the health professional or the health professional's attorney with the information listed in this section. The Board shall provide the following information:
 - 1. Any review conducted by an expert or consultant providing an evaluation or opinion on the allegations.
 - 2. Any records on the patient obtained by the board from other health care providers.
 - 3. The results of any evaluations or tests of the health professional conducted at the board's direction.
 - 4. Any other factual information that the board will use in making its determination.
- B. A person who obtains information from the board pursuant to this section may not release it to any other person or entity or use it in any proceeding or action except the disciplinary interview and any administrative proceedings or appeal related to the disciplinary interview. A person who violates this subsection commits an act of unprofessional conduct.
- C. The board may charge the health professional or the health professional's attorney for the cost of providing the information received up to the fee for making a copy of each page as prescribed by section 12-284, subsection A.

32-3208. Criminal charges; mandatory reporting requirements; civil penalty

- A. A health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after receiving or renewing a license or certificate must notify the health professional's regulatory board in writing within ten working days after the charge is filed.
- B. An applicant for licensure or certification as a health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after submitting the application must notify the regulatory board in writing within ten working days after the charge is filed.
- C. On receipt of this information the regulatory board may conduct an investigation.
- D. A health professional who does not comply with the notification requirements of this section commits an act of unprofessional conduct. The health professional's regulatory board may impose a civil penalty of not more than one thousand dollars in addition to other disciplinary action it takes.
- E. The regulatory board may deny the application of an applicant who does not comply with the notification requirements of this section.

F. On request a health profession regulatory board shall provide an applicant or health professional with a list of misdemeanors that the applicant or health professional must report.

32-3209. Release of information; fees

- A. On request of any person, a health profession regulatory board must provide the following information to that person:
 - 1. A copy of the minutes of any specified board meeting.
 - 2. A copy of a board action concerning a person regulated by the board.
 - 3. A copy of the final adjudication of a complaint against a person regulated by the board. For the purposes of this paragraph, final adjudication of a complaint does not include any complaint that was dismissed or terminated more than five years before the request was submitted.
 - 4. The name and primary practice address of a person regulated by the board.
- B. A health regulatory board may charge a fee for copies of any of the information in subsection A.
- 13-3620. <u>Duty to report abuse</u>, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions
- Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, A. child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature or who reasonably believes there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant who is protected under section 36-2281 shall immediately report or cause reports to be made of this information to a peace officer or to child protective services in the department of economic security, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only. A member of the clergy, Christian science practitioner or priest who has received a confidential communication or a confession in that person's role as a member of the clergy, Christian science practitioner or a priest in the course of the discipline enjoined by the church to which the member of the clergy, Christian science practitioner or priest belongs may withhold reporting of the communication or confession if the member of the clergy, Christian science practitioner or priest determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations, the member of the clergy, Christian Science practitioner or priest may otherwise make of the minor. For the purposes of this subsection, "person" means:
 - 1. Any physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient.
 - 2. Any peace officer, member of the clergy, priest or Christian Science practitioner.
 - 3. The parent, stepparent or guardian of the minor.

- 4. School personnel or domestic violence victim advocate who develops the reasonable belief in the course of their employment.
- 5. Any other person who has responsibility for the care or treatment of the minor.
- B. A report is not required under this section for conduct prescribed by sections 13-1404 and 13-1405 if the conduct involves only minors who are fourteen, fifteen, sixteen or seventeen years of age and there is nothing to indicate that the conduct is other than consensual.
- C. If a physician, psychologist or behavioral health professional receives a statement from a person other than a parent, stepparent, guardian or custodian of the minor during the course of providing sex offender treatment that is not court ordered or that does not occur while the offender is incarcerated in the state department of corrections or the department of juvenile corrections, the physician, psychologist or behavioral health professional may withhold the reporting of that statement if the physician, psychologist or behavioral health professional determines it is reasonable and necessary to accomplish the purposes of the treatment.
- D. Reports shall be made immediately by telephone or in person and shall be followed by a written report within seventy-two hours. The reports shall contain:
 - 1. The names and addresses of the minor and the minor's parents or the person or persons having custody of the minor, if known.
 - 2. The minor's age and the nature and extent of the minor's abuse, child abuse, physical injury or neglect, including any evidence of previous abuse, child abuse, physical injury or neglect.
 - 3. Any other information that the person believes might be helpful in establishing the cause of the abuse, child abuse, physical injury or neglect.
- E. A health care professional who is regulated pursuant to title 32 and who, after a routine newborn physical assessment of a newborn infant's health status or following notification of positive toxicology screens of a newborn infant, reasonably believes that the newborn infant may be affected by the presence of alcohol or a drug listed in section 13-3401 shall immediately report this information, or cause a report to be made, to child protective services in the department of economic security. For the purposes of this subsection, "newborn infant" means a newborn infant who is under thirty days of age.
- F. Any person other than one required to report or cause reports to be made under subsection A of this section who reasonably believes that a minor is or has been a victim of abuse, child abuse, physical injury, a reportable offense or neglect may report the information to a peace officer or to child protective services in the department of economic security, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only.
- G. A person who has custody or control of medical records of a minor for whom a report is required or authorized under this section shall make the records, or a copy of the records, available to a peace officer or child protective services worker investigating the minor's neglect, child abuse, physical injury or abuse on written request for the records signed by the peace officer or child protective services worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.

- H. When telephone or in-person reports are received by a peace officer, the officer shall immediately notify child protective services in the department of economic security and make the information available to them. Notwithstanding any other statute, when child protective services receive these reports by telephone or in person, it shall immediately notify a peace officer in the appropriate jurisdiction.
- I. Any person who is required to receive reports pursuant to subsection A of this section may take or cause to be taken photographs of the minor and the vicinity involved. Medical examinations of the involved minor may be performed.
- J. A person who furnishes a report, information or records required or authorized under this section, or a person who participates in a judicial or administrative proceeding or investigation resulting from a report, information or records required or authorized under this section, is immune from any civil or criminal liability by reason of that action unless the person acted with malice or unless the person has been charged with or is suspected of abusing or neglecting the child or children in question.
- K. Except for the attorney client privilege or the privilege under subsection L of this section, no privilege applies to any:
 - 1. Civil or criminal litigation or administrative proceeding in which a minor's neglect, dependency, abuse, child abuse, physical injury or abandonment is an issue.
 - 2. Judicial or administrative proceeding resulting from a report, information or records submitted pursuant to this section.
 - 3. Investigation of a minor's child abuse, physical injury, neglect or abuse conducted by a peace officer or child protective services in the department of economic security.
- L. In any civil or criminal litigation in which a child's neglect, dependency, physical injury, abuse, child abuse or abandonment is an issue, a member of the clergy, a Christian science practitioner or a priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a member of the clergy, a Christian science practitioner or a priest in the course of the discipline enjoined by the church to which he belongs. Nothing in this subsection discharges a member of the clergy, a Christian Science practitioner or a priest from the duty to report pursuant to subsection A of this section.
- M. If psychiatric records are requested pursuant to subsection G of this section, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:
 - 1. Personal information about individuals other than the patient.
 - 2. Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.
- N. If any portion of a psychiatric record is excised pursuant to subsection M of this section, a court, upon application of a peace officer or child protective services worker, may order that the entire record or any portion of the record that contains information relevant to the reported abuse, child abuse, physical injury or neglect be made available to the peace officer or child protective services worker investigating the abuse, child abuse, physical injury or neglect.

- O. A person who violates this section is guilty of a class 1 misdemeanor, except if the failure to report involves a reportable offense, the person is guilty of a class 6 felony.
- P. For the purposes of this section:
 - 1. "Abuse" has the same meaning prescribed in section 8-201.
 - 2. "Child abuse" means child abuse pursuant to section 13-3623.
 - 3. "Neglect" has the same meaning prescribed in section 8-201.
 - 4. "Reportable offense" means any of the following:
 - (a) Any offense listed in chapters 14 and 35.1 of this title or section 13-3506.01.
 - (b) Surreptitious photographing, videotaping, filming or digitally recording of a minor pursuant to section 13-3019.
 - (c) Child prostitution pursuant to section 13-3212.
 - (d) Incest pursuant to section 13-3608.

13-4066. Privileged communication; sex offender treatment

Any statement that is made by a person who undergoes sex offender treatment that is ordered by the court or that is provided by the state department of corrections or the department of juvenile corrections to a person who is convicted of an offense listed in chapter 14 or 35.1 of this title and any evidence that results from that treatment is not admissible against the person in any criminal or juvenile delinquency proceeding unless the person consents, except that the statement or evidence may be used pursuant to rule 404 (b) and (c), Arizona rules of evidence.

12-2291. Definitions

In this article, unless the context otherwise requires:

- 1. "Contractor" means an agency or service that duplicates medical records on behalf of health care providers.
- 2. "Health care decision maker" means an individual who is authorized to make health care treatment decisions for the patient, including a parent of a minor or an individual who is authorized pursuant to title 14, chapter 5, article 2 or 3 or section 36-3221 or 36-3231.
- 3. "Health care provider" means:
 - (a) A person licensed pursuant to title 32 who maintains medical records.
 - (b) A health care institution as defined in section 36-401.
 - (c) An ambulance service as defined in section 36-2201.

- (d) A health care services organization licensed pursuant to title 20, chapter 4, article 9.
- 4. "Medical records" means all communications that are recorded in any form or medium and that are maintained for purposes of patient treatment, including reports, notes and orders, test results, diagnoses, treatments, photographs, videotapes, X rays, billing records and the results of independent medical examinations that describe patient care. Medical records include psychological records and all medical records held by a health care provider, including medical records that are prepared by other providers. Medical records do not include materials that are prepared in connection with utilization review, peer review or quality assurance activities, including records that a health care provider prepares pursuant to section 36-441, 36-445 or 36-2402. Medical records do not include recorded telephone and radio calls to and from a publicly operated emergency dispatch office relating to requests for emergency services or reports of suspected criminal activity, but shall include communications between emergency medical personnel and medical personnel concerning the treatment of a person.

12-2292. Confidentiality of medical records

- A. Unless otherwise provided by law, all medical records and the information contained in medical records are privileged and confidential. A health care provider may only disclose that part or all of a patient's medical record that is authorized pursuant to law or the patient's written authorization.
- B. If necessary for its own business operations or in response to a request for a copy of the patient's medical record, a health care provider may release a patient's medical record to a contractor for the purpose of duplicating or disclosing the record on behalf of a health care provider. A contractor shall not disclose any part or all of a patient's medical record in its custody except as provided in this article. After duplicating or disclosing a patient's medical record on behalf of a health care provider, a contractor shall return the record to the health care provider who released the medical record to the contractor.
- C. This article does not limit the effect of any other federal or state law governing the confidentiality of medical records.

12-2293. Release of medical records to patients and health care decision makers

- A. On the written request of a patient for access to or copies of the patient's medical records, the health care provider in possession of the record shall provide the medical records to the patient or the person designated in writing by the patient unless the attending physician or psychologist determines and notifies the health care provider in possession of the record that the patient's access to the patient's medical record is contraindicated due to treatment of the patient for a mental disorder as defined in section 36-501. Psychologists are exempt from making available raw test data and psychometric testing materials. If the attending physician or psychologist determines that the patient should not have access to the patient's medical records, the physician or psychologist shall note this determination in the patient's medical record.
- B. On written request of a patient's health care decision maker for access to or copies of the patient's medical records, the medical records shall be provided to the health care decision maker or the person designated in writing by the health care decision maker unless the access is limited by the patient.
- C. Records that are not in written form shall be released only if the patient or patient's health care decision maker specifically requests and identifies in writing the type of record desired.

D. Notwithstanding subsection A of this section, if the patient receives treatment for a mental disorder as defined in section 36-501, on written request of a health care decision maker for access to or copies of the patient's medical records, the health care provider may refuse to provide records which indicate confidential information between the patient and the health care professional. If the attending physician determines that the health care decision maker should not have access to that part of the patient's medical record, the attending physician shall note this determination in the patient's medical record and shall provide to the health care decision maker a written explanation of the reason for such denial. The health care provider shall release medical record information to the health care decision maker, which includes the patient's therapy treatment plan, and medication information.

12-2294. Release of medical records to third parties

- A. A health care provider shall disclose medical records or the information contained in medical records without the patient's written authorization as otherwise required by law.
- B. A health care provider may disclose medical records or the information contained in medical records without the patient's written authorization as follows or as otherwise authorized by law:
 - 1. To attending and consulting health care providers who are currently providing health care to the patient for the purpose of diagnosis or treatment of the patient.
 - 2. To health care providers who have previously provided treatment to the patient, to the extent that the records pertain to the provided treatment.
 - 3. To ambulance attendants as defined in section 36-2201 for the purpose of providing care to or transferring the patient whose records are requested.
 - 4. To a private agency that accredits health care providers and to the Arizona medical board.
 - 5. To health care providers for the purpose of conducting utilization review, peer review and quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.
 - 6. To a person or entity that provides billing, claims management, medical data processing, utilization review or other administrative services to the patient's health care providers.
 - 7. To the legal representative of a health care provider in possession of the medical record for the purpose of securing legal advice.
 - 8. To the personal representative or administrator of the estate of a deceased patient. If a personal representative or administrator has not been appointed, a health care provider may release medical records to the following persons and in the following order of priority, unless the deceased patient during the deceased patient's lifetime or a person in a higher order of priority has notified the health care provider in writing that he opposes the release of the medical records:
 - (a) The deceased patient's spouse, unless the patient and the patient's spouse were legally separated at the time of the patient's death.
 - (b) The acting trustee of a trust created by the deceased patient either alone or with the deceased patient's spouse if the trust was a revocable inter vivos trust during the deceased

patient's lifetime and the deceased patient was a beneficiary of the trust during the deceased patient's lifetime.

- (c) An adult child of the deceased patient.
- (d) A parent of the deceased patient.
- (e) An adult brother or sister of the deceased patient.
- (f) A guardian or conservator of the deceased patient at the time of the patient's death.
- 9. To the patient's third party payor if the payor has separately obtained the patient's written authorization to disclose medical record information to the payor and furnishes a copy of this authorization to the health care provider.
- C. In addition to the persons listed in subsection B, paragraph 8 of this section, a health care provider may release medical records or the information contained in medical records to the patient's health care decision maker at the time of the patient's death.
- D. A health care provider shall disclose medical records to persons listed in subsection B, paragraphs 2, 4, 5 and 8 of this section only on written request. The person requesting the records shall sign the request and shall demonstrate the authority to have access to the records.
- E. Medical records that are not in written form shall only be released if the written request specifically identifies the type of record desired.
- F. Medical records that are disclosed pursuant to this section remain privileged. A person who receives medical records pursuant to this section shall not disclose those records without the written authorization of the patient or the patient's health care decision maker, unless otherwise provided by law.

12-2295. Charges

- A. Except as otherwise provided by law, a health care provider or contractor may charge a person who requests copies of medical records a reasonable fee for the production of the records. Except as necessary for continuity of care, a health care provider or contractor may require the payment of any fees in advance.
- B. A health care provider or contractor shall not charge for the pertinent information contained in medical records provided to:
 - 1. Another health care provider for the purpose of providing continuing care to the patient to whom the medical record pertains.
 - 2. The patient to whom the medical record pertains for the demonstrated purpose of obtaining health care.
 - 3. The health care decision maker or surrogate of the patient to whom the medical record pertains for the demonstrated purpose of obtaining health care.

4. The Arizona medical board or an officer of the department of health services or the local health department requesting records pursuant to section 36-662.

12-2296. Immunity

A health care provider or contractor that acts in good faith under this article is not liable for damages in any civil action for the disclosure of medical records or payment records or information contained in medical records or payment records that is made pursuant to this article or as otherwise provided by law. The health care provider or contractor is presumed to have acted in good faith. The presumption may be rebutted by clear and convincing evidence.

12-2297. Retention of records

- A. Unless otherwise required by statute or by federal law, a health care provider shall retain the original or copies of a patient's medical records as follows:
 - 1. If the patient is an adult, for at least six years after the last date the adult patient received medical or health care services from that provider.
 - 2. If the patient is a child, either for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received medical or health care services from that provider, whichever date occurs later.
 - 3. Source data may be maintained separately from the medical record and must be retained for six years from the date of collection of the source data.
- B. When a health care provider retires or sells the provider's practice the provider shall take reasonable measures to ensure that the provider's records are retained pursuant to this section.
- C. A person who is licensed pursuant to title 32 as an employee of a health care provider is not responsible for storing or retaining medical records but shall compile and record the records in the customary manner.
- D. A nursing care institution as defined in section 36-401 shall retain patient records for six years after the date of the patient's discharge. For a minor, the nursing care institution shall retain the records for three years after the patient reaches eighteen years of age or for six years after the date of the patient's discharge, whichever date occurs last.

32-3203. Malpractice claim investigation

On receipt of a malpractice report and a copy of a malpractice complaint as provided in section 12-570, the health profession regulatory board shall initiate an investigation into the matter to determine if the licensee is in violation of the statutes or rules governing licensure.

32-3801. Personal information maintained by professional boards; confidentiality

Notwithstanding any law to the contrary, a professional's residential address and residential telephone number or numbers maintained by a professional board established pursuant to this title are not available to the public unless they are the only address and numbers of record.

35-143.01. Special funds; appropriation; reversion; use

- A. All monies deposited in special agency funds of self-supporting regulatory agencies, as provided in section 35-142, to be used by such agency for administration and enforcement, shall be subject to annual legislative appropriation.
- B. Unless otherwise provided by the legislature, a special fund self-supporting regulatory agency shall not expend more monies than are appropriated by the legislature for a fiscal year, and any monies remaining at the end of the fiscal year revert to the special agency fund.
- C. Any unexpended or unencumbered balance of monies remaining in the special funds of self-supporting regulatory agencies as provided in section 35-142 at the end of the fiscal year shall not revert to the state general fund and may be made available by the legislature for use by the agency for the following fiscal year.

41-1001.01. Regulatory bill of rights

- A. To ensure fair and open regulation by state agencies, a person:
 - 1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in section 12-348.
 - 2. Is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in section 41-1007.
 - 3. Is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 41-1008.
 - 4. Is entitled to receive the information and notice regarding inspections prescribed in section 41-1009.
 - 5. May review the full text or summary of all rule making activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.
 - 6. May participate in the rule making process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:
 - (a) Providing written or oral comments on proposed rules to an agency as provided in section 41-1023 and having the agency adequately address those comments as provided in section 41-1052, subsection C.

- (b) Providing written or oral comments on rules to the governor's regulatory review council as provided in article 5 of this chapter.
- 7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.
- 8. Is entitled to have an agency not make a rule under a specific grant of rule making authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rule making authority to supplement a more specific grant of rule making authority as provided in section 41-1030, subsection C.
- 9. May allege that an existing agency practice or substantive policy statement constitutes a rule and have that agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule as provided in section 41-1033.
- 10. May file a complaint with the administrative rules oversight committee concerning:
 - (a) A rule's, practice's or substantive policy statement's lack of conformity with statute or legislative intent as provided in section 41-1047.
 - (b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is alleged to be duplicative or onerous as provided in section 41-1048.
- 11. May have the person's administrative hearing on contested cases and appealable agency actions heard by an independent administrative law judge as provided in articles 6 and 10 of this chapter.
- 12. May have administrative hearings governed by uniform administrative appeal procedures as provided in articles 6 and 10 of this chapter.
- 13. May have an agency approve or deny the person's license application within a predetermined period of time as provided in article 7.1 of this chapter.
- 14. Is entitled to receive written notice from an agency on denial of a license application:
 - (a) That justifies the denial with references to the statutes or rules on which the denial is based as provided in section 41-1076.
 - (b) That explains the applicant's right to appeal the denial as provided in section 41-1076.
- 15. Is entitled to receive information regarding the license application process at the time the person obtains an application for a license as provided in section 41-1079.
- 16. May receive public notice and participate in the adoption or amendment of agreements to delegate agency functions, powers or duties to political subdivisions as provided in section 41-1026.01 and article 8 of this chapter.
- 17. May inspect all rules and substantive policy statements of an agency, including a directory of documents, in the office of the agency director as provided in section 41-1091.

- 18. May file a complaint or inquiry with the advocate for private property rights regarding constitutional taking as provided in chapter 8, article 1.1 of this title.
- 19. May file a complaint with the office of the ombudsman-citizens aide to investigate administrative acts of agencies as provided in chapter 8, article 5 of this title.
- B. The enumeration of the rights listed in subsection A of this section does not grant any additional rights that are not prescribed in the sections referenced in subsection A of this section.

41-3013.08. Optometry board; termination July 1, 2013

- A. The state board of optometry terminates on July 1, 2013.
- B. Title 32, chapter 16 is repealed on January 1, 2014.